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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Peter H. Kang, Magistrate Judge

IN RE: SOCIAL MEDIA)
ADOLESCENT ADDICTION/PERSONAL)
INJURY)
PRODUCTS LIABILITY LITIGATION) NO. 22-MD-03047 YGR (PHK)
)

San Francisco, California
Monday, April 22, 2024

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1 Monday - April 22, 2024

1:13 p.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Now calling 22-MD-3047, In Re: Social
5 Media Adolescent Products Litigation.

6 Counsel, when speaking please approach the microphones and
7 state your appearance for the record.

8 **THE COURT:** Good afternoon.

9 **ALL:** Good afternoon, Your Honor.

10 **THE COURT:** All right. Shall we turn to the ripe
11 disputes first? We'll just take them in order unless somebody
12 has a different order they want to suggest.

13 All right. I don't know if anybody needs to be heard on
14 the first one. On the state agency issue, obviously no oral
15 argument today. I don't know, I was going to say by a show of
16 hands, does anybody feel the need for more oral argument on
17 that issue?

18 **MR. LEWIS:** Your Honor, Chris Lewis on behalf of the
19 States' Attorney General. The States' Attorney General, if
20 Your Honor would like, would like to add additional argument
21 just in that with the complexity and the short briefing that
22 was allowed, I think there are many states that feel they need
23 a little more color on the applicable law in the matter.

24 **THE COURT:** Does every state feel that way or some of
25 the 35 states.

1 **MR. LEWIS:** Some of the 35 states.

2 **THE COURT:** Do you know which ones those are?

3 **MR. LEWIS:** I don't know off the top of my head.

4 **THE COURT:** Are we hearing an echo?

5 **MR. LEWIS:** We are.

6 **THE COURT:** Yeah.

7 **THE CLERK:** I'm not sure where it's coming from.

8 **THE COURT:** All right. Do you have a rough sense of
9 how many are --

10 **MR. LEWIS:** I know we heard from at least eight
11 directly. I think there are others.

12 **THE COURT:** All right. Well, why don't we do this:
13 By Wednesday -- if you already know who they are, by Wednesday
14 file a notice on the docket with a statement from all the
15 states, and it can be a chart just giving me, you know, in the
16 chart which states want more oral -- want another oral argument
17 on this and which states are happy to rest on the current
18 record.

19 **MR. LEWIS:** We can do that, Your Honor.

20 **THE COURT:** And then depending on the number of states
21 that are asking for oral argument, my worry is that it may be
22 too many people to argue at the next DMC, and I don't want to
23 do a marathon DMC if I can avoid it so I may set a separate
24 hearing. But it's only like -- I heard you, it's eight, so
25 it's not one or two. If it was one or two, I was going to say

1 we'd do it at the next DMC; but if it's going to be eight plus,
2 I'm probably going to set a separate hearing.

3 **MR. LEWIS:** That works, Your Honor. We'll take
4 another poll and make sure everyone is still where they were
5 weeks ago.

6 **THE COURT:** Okay. Now, I'm not asking for oral
7 argument and I'm perfectly happy and willing to decide this on
8 the current record; but if people feel the need for it, I'm not
9 going to bar them from doing another oral argument.

10 Tell everybody else, tell the other State agents I'm not
11 going to hear hours and hours and hours from each state either.
12 So it's going to be, you know, short and to the point for each
13 state.

14 **MR. LEWIS:** Understood.

15 **THE COURT:** Okay.

16 **MS. SIMONSEN:** Your Honor, just to -- Ashley Simonsen
17 for Meta defendants from Covington & Burling.

18 Our position is that with discovery proceeding so quickly,
19 it is important, obviously, that we get this issue resolved.
20 We've already had a fair amount of argument on this issue. We
21 had extensive state-specific briefing. So our position is
22 additional argument is not needed and it's something that, you
23 know, the parties could devote the time they'd otherwise devote
24 to preparing for that argument on, you know, responding to the
25 voluminous discovery requests that we have in this case.

1 So for that reason we would submit that it's not
2 necessary; and that if it is held, it be held as promptly as
3 possible so that we can actually take the discovery that we
4 need from the State Attorneys General depending on Your Honor's
5 ruling on the merits.

6 **THE COURT:** Got it. Well, I certainly hope there
7 won't be many more than eight states; and states that are
8 concerned about the issue, all parties are -- should understand
9 that the more argument it's going to be, the longer it's going
10 to take for me to get the transcript and take all that into
11 account.

12 **MR. LEWIS:** Understood.

13 Your Honor, would this be something you'd entertain remote
14 argument on?

15 **THE COURT:** Nope. If a state wants argument, they've
16 got to come here.

17 **MR. LEWIS:** I understand.

18 **THE COURT:** Okay.

19 **MR. LEWIS:** Thank you, Your Honor.

20 **MS. SIMONSEN:** And just a final note to point out that
21 we certainly need to reserve the right to put forth our case
22 for the prejudice that we've suffered as a result of the really
23 lengthy delay we've already experienced in being able to take
24 discoveries from the AGs. We're already a few months into
25 discovery in a very short time frame where it's been delayed by

1 virtue of this dispute so, of course, we reserve the right to
2 seek that relief, if needed, in light of this additional delay
3 to hear the issue.

4 **THE COURT:** I don't think anything has stopped you
5 from serving subpoenas on the state agents, has it? Have I
6 stopped you?

7 **MS. SIMONSEN:** We have served requests for production
8 on all of the state Attorneys General. If we had to serve the
9 subpoenas on every single agency, of course that would
10 essentially give plaintiffs' exactly what they're asking for,
11 which we say is improper because these are actually agencies
12 represented by and should be represented by the Attorneys
13 General themselves. So our view is, you know, we do need
14 resolution of this issue in order to move forward.

15 **THE COURT:** Not exactly my question. Has anybody
16 stopped you from serving subpoenas on the state agencies?

17 **MS. SIMONSEN:** Only the lengthy and very cumbersome
18 process involved. And the whole, obviously, reason that we're
19 requesting the relief we are is that we believe it's
20 appropriate to serve them on the states themselves, which we
21 have done, and we've proceeded with meet and confers with the
22 states. In those meet and confers, we've also not been able to
23 get very far. The states haven't provided us with search terms
24 and custodians yet on our RFPs.

25 So there are a lot -- a lot of reasons why things are

1 getting very delayed; and from our perspective, it's on the
2 AG's end, and I just want to make sure we're clear on the
3 record that we do reserve the right cure that prejudice down
4 the road.

5 **THE COURT:** Clear on the record. There's nothing
6 barring you from serving those subpoenas; correct?

7 **MS. SIMONSEN:** I suppose not, except that technically
8 it would be improper to serve third-party subpoenas if these
9 are, in fact, you know, parties to a case and a different
10 standard applies to those discovery requests, and it's our
11 position that they are proper parties to the case.

12 **THE COURT:** All right. Anything further on state
13 agencies at this time?

14 **MR. LEWIS:** Only that likely we will provide a unified
15 pleading for the states and unified oral argument. I don't
16 know that each individual state will come, but we will be
17 arguing on behalf of those states that have raised the issues.

18 **THE COURT:** I mean --

19 **MR. LEWIS:** Just for logistics.

20 **THE COURT:** Okay. Well, if you want to -- I
21 definitely -- you mean some states are going to argue on behalf
22 of other states? Is that what's going to happen?

23 **MR. LEWIS:** Correct.

24 **THE COURT:** Okay. Why didn't you do the briefing that
25 way? I suggested that two DMCs ago, that you kind of

1 consolidate the briefing instead of giving me 35 separate
2 briefs.

3 **MR. LEWIS:** I think the 35 separate briefs were
4 because the individuals in those states are the subject matter
5 experts on what that relationship is between the Attorney
6 General's office and its state agencies. So we wanted to defer
7 to them to actually do that drafting.

8 Now that we have that, I think it's easy for us as the
9 leads to --

10 **THE COURT:** Okay. I mean, if that -- certainly if
11 that makes it more efficient. Like I said, I'm not going to
12 give you tons of time for this argument.

13 **MR. LEWIS:** Certainly.

14 **THE COURT:** Okay. It might help, then, if you
15 indicate who's going to argue on behalf of each state then, if
16 I need to figure out if we need the big courtroom or if we can
17 do it in here, for example.

18 **MR. LEWIS:** We can do that, Your Honor.

19 **THE COURT:** All right. So by Wednesday.

20 **MR. LEWIS:** Thank you.

21 **THE COURT:** All right. Next, confidentiality
22 designations. Who's -- Ms. Simonsen, you're speaking to that I
23 assume.

24 **MS. SIMONSEN:** Yes.

25 **THE COURT:** So who's speaking to this?

1 **MS. HAZAM:** Good afternoon, Your Honor. Lexi Hazam on
2 behalf of the individual and school district plaintiffs.

3 **THE COURT:** Okay. So why do these specific 35
4 documents matter?

5 **MS. HAZAM:** They matter because we think the
6 designations of them were improper. They are almost all -- I
7 think all, perhaps -- except perhaps one -- documents that are
8 at least partially unsealed in our master complaint and are
9 highly relevant to the case, and yet they remain with highly
10 confidential designations, or at least they did until we were
11 informed late on Friday that Meta would be changing the
12 designations on about one-third of them.

13 **THE COURT:** Okay. So this kind of goes to the
14 procedural question, which is: Did you get to the point of
15 lead counsel meet and confer on these documents?

16 **MS. HAZAM:** There has been meet and confer. We were
17 waiting for Meta to respond to our letter and initial e-mails
18 regarding it with their position on each of the documents. We
19 had provided the standard chart that listed the documents, our
20 basis for the challenge, had a column for their response. We
21 got that response on Friday evening.

22 The concern, I think, before Your Honor today is the more
23 general one of whether we can proceed with confidentiality
24 challenges and, if need be, bring disputes that can't be
25 resolved to the Court, which we very much believe we can and

1 should do consistent with the protective order which says that
2 any party may do so at any time.

3 **THE COURT:** Right. So here's my guidance, and I
4 already read what Meta said on this point: I don't want to be
5 resolving tons of motions that are unnecessary for changing the
6 confidentiality designation for documents that ultimately don't
7 really matter all that much.

8 All right. So when I asked you why these 35 documents
9 matter, all you told me was that because some of them were
10 partially redacted. You didn't give me any reason why any of
11 them are important to the substance of the case.

12 **MS. HAZAM:** I can do so, Your Honor. They were --

13 **THE COURT:** Let me finish. Okay?

14 If you're going to -- this is a discovery dispute,
15 confidentiality challenges are a discovery dispute. So you're
16 more than welcome to follow my discovery procedures on this,
17 but I'm going to emphasize my guidance I've given in previous
18 DMCs and my standing order. There better be a good reason for
19 bringing this to me and there better be a good reason why
20 counsel and then lead counsel can't work most, if not all, of
21 these things out.

22 All right. I'm going to be very disappointed if you can't
23 work it out. Because whether it's designated as confidential
24 or highly confidential, you have the documents. It's not
25 impeding your ability to litigate your case; right? It's just

1 a matter of how you treat it in terms of confidentiality.

2 This is not the kind of case where I would expect the
3 individual plaintiffs to be actively participating in the
4 process prosecution of the case with counsel. I could be
5 wrong; right? But, in other words, I don't think this is a
6 case where you need to show highly confidential documents that
7 you think are public to your clients in order to confer with
8 them on legal strategy. All right?

9 So this is not an issue that I think the parties ought to
10 be spending considerable time and considerable Court time on,
11 so -- but it's a discovery dispute and parties can have
12 reasonable disputes, and I have a whole procedure for that and
13 you know what the procedure is. All right?

14 **MS. HAZAM:** Understood, Your Honor. I think --

15 **THE COURT:** Let me finish.

16 **MS. HAZAM:** Sorry.

17 **THE COURT:** However, the party challenging a
18 confidentiality designation -- this goes for everybody; all
19 right? -- if you're going to do that, you need to show -- you
20 have the burden of showing to me why it matters for this
21 particular document to be brought to my attention, why it
22 matters for the case. All right?

23 If it's a take-out menu that was incorrectly designated as
24 confidential and you can't for some reason reach agreement on
25 that and you still decide to bring it to me in a motion, I'm

1 going to look very -- I'm going to look very hard at the party
2 who decided to waste everybody's time bringing that kind of
3 motion. Do I make myself clear on this?

4 **MS. HAZAM:** Yes, you do. Understood, Your Honor.

5 **THE COURT:** Okay.

6 **MS. HAZAM:** I do want to clarify that I believe we're
7 here today because Meta has a request that we not be permitted
8 to proceed under any circumstances prior to a summary judgment
9 motion on designation disputes.

10 **THE COURT:** And you won on that issue; right?

11 **MS. HAZAM:** Understood.

12 **THE COURT:** You follow -- if it's a -- confidential
13 designation is essentially a discovery dispute, and I have a
14 whole procedure for that. You understand what the procedure
15 is, and I've given you the guidance on that, so...

16 **MS. HAZAM:** Thank you, Your Honor.

17 I also just want to state for the record that these are
18 documents that are highly relevant and crucial to our case.
19 That's why they're in our master complaint. They are the basis
20 for key allegations.

21 They also are documents that we need to share with our
22 experts, and there are additional burdens under the protective
23 order for us to do so if they remain designated as a highly
24 confidential matter at this point.

25 So that's one of the reasons for coming forward with a

1 very select group of documents. We do not intend to get
2 anywhere near the take-out menu.

3 **THE COURT:** Okay. So -- and no overdesignations of
4 confidentiality. And to the extent you already produced
5 documents prior to the case and marked them as highly, highly
6 confidential in connection with a preinvestigation thing and
7 you need to go back and double-check them, I would highly
8 recommend that the defendants do that. Because, you know,
9 it's -- there's one thing to designate it as confidential or
10 highly confidential for the purposes of investigation but
11 you're under a different order now. All right?

12 **MS. SIMONSEN:** Understood, Your Honor.

13 And we have gone back and redesignated everything we
14 previously produced.

15 **THE COURT:** All right.

16 **MS. SIMONSEN:** I do want to be clear that were not
17 asking that plaintiffs never be allowed to bring a
18 confidentiality challenge. It's precisely what Your Honor had
19 ordered, which is that only in connections with documents they
20 actually need to use in the litigation for a purpose.

21 We did ask during the conferral why they needed to use
22 these documents. They did not have an explanation aside from
23 they're allowed to challenge confidentiality.

24 We have worked diligently to look at their challenges and
25 assure them that we will meet and confer with them on any

1 challenges that they bring understanding that we're on a very
2 tight timeline. And we are looking at these documents case by
3 case, but obviously there are times when an oversight may be
4 made.

5 With respect to counsel's representation that all of these
6 documents but one were partially unsealed, we're talking about
7 two or three words that may have -- we may have agreed to
8 unseal here and there to the extent that the plaintiffs include
9 a very short excerpt in their master complaint. It was not the
10 entirety of the document, and the entirety of the documents
11 that we're maintaining is highly confidential is because of
12 material elsewhere in the document, not the two or three words
13 or sentences that we may have agreed the plaintiffs could use
14 in their master complaint.

15 **MS. HAZAM:** Your Honor, if I may just briefly respond.

16 It is often quite a bit more than a few words; and to us,
17 the fact that those documents were designated highly
18 confidential until the filing of the complaint would suggest --
19 at which point Meta agreed to have then become completely
20 public straight from highly confidential would suggest that
21 some of those designations are not proper under the protective
22 order. We have made them on a very individualized basis and
23 not painted with a broad brush.

24 To also be clear, Meta has taken the position, this is the
25 issue that's before you, that we should not be able to proceed

1 to any kind of motion practice on these disputes.

2 While we intend to do so very conservatively and exhaust
3 fully the meet-and-confer process and be very judicious about
4 that, that is not consistent with the protective order and we
5 believe would only foster overdesignation and inefficiency of
6 postponing all of the disputes until the end just before a
7 motion without the Court's guidance as to what is proper and
8 improper.

9 **THE COURT:** Okay. But you already won. You just won
10 on the issue. I already said you can file a motion.

11 **MS. HAZAM:** Thank you.

12 **THE COURT:** So I don't know why you're still arguing
13 about that.

14 **MS. SIMONSEN:** And I already just clarified that it is
15 not our position that they can never bring a confidentiality
16 challenge.

17 I do just want to clarify, we did not fully undesignate
18 the documents they cited in their complaint. We undesignated
19 the excerpts, not the full documents.

20 **THE COURT:** You both know what you did and what you
21 didn't do, and you're not going to make -- you're not going to
22 resolve it on the record here; right? So I urge you to work
23 these -- this is the kind of thing good lawyers should be able
24 to work out. Right?

25 So as I said, you don't need to show me your work product,

1 how you would use the document. You do need to show why it's
2 important to the case in some way and substantively relevant.
3 Okay?

4 **MS. SIMONSEN:** Yes, Your Honor.

5 **THE COURT:** All right. And, again, no
6 overdesignation, no overburdening the Court with unnecessary
7 motion practices. Do I make myself clear?

8 **MS. SIMONSEN:** Yes.

9 **MS. HAZAM:** Yes, Your Honor.

10 **THE COURT:** And please use the meet-and-confer process
11 as much as you can.

12 All right. Any more on that issue?

13 **MS. HAZAM:** No, Your Honor.

14 **MS. SIMONSEN:** No, Your Honor.

15 **THE COURT:** All right. Next issue, litigation hold.
16 Who's going to speak to this?

17 **MR. WARREN:** Good afternoon, Your Honor. Previn
18 Warren for the plaintiffs.

19 **THE COURT:** All right. So let me ask you. Tell me if
20 I'm wrong but, as I understand, you've gotten a number of
21 custodians identified by the defendants.

22 **MR. WARREN:** That's true.

23 **THE COURT:** You've gotten your own counterdesignation
24 of proposed custodians that you've identified.

25 **MR. WARREN:** That's true.

1 **THE COURT:** There's, according to the defendants, some
2 custodians or people who've been identified through the ESI
3 meet-and-confer process.

4 **MR. WARREN:** There are some.

5 **THE COURT:** Okay. And then you've already started
6 taking at least the Snap depos and you've got some others in
7 the pipeline that -- where you're going into 30(b) (6) questions
8 about team and leaders and structure and things like that.

9 **MR. WARREN:** To the extent the defendants have allowed
10 us to take depositions on those topics, yes.

11 **THE COURT:** Okay. So there is a universe of
12 custodians that have been identified to you through those
13 processes; and as I understand, your main concern is even with
14 all that, there may be some larger number of potential
15 custodians out there whose documents you're missing or you're
16 missing in some way.

17 **MR. WARREN:** Well, that's a fair -- that's a fair
18 synopsis, yeah.

19 **THE COURT:** Oaky. So -- but we don't know -- this
20 kind of goes to something I've said at earlier DMCs. We don't
21 know how big the problem is; right? You're guessing that
22 there's 3,000 other potential custodians out there that you
23 missed, and they're saying, "Well, it could be two." Right?
24 And so we don't know.

25 So here's what I'm going to do -- all right? -- by Friday

1 the defendants have to give the plaintiffs just the number of
2 people who've been given litigation hold notices for each -- on
3 behalf of each defendant, just the number -- all right? -- and
4 the dates those notices went out.

5 If it turns out, as your hypothetical guessing in the DMC
6 status report said, if it turns out it's 50 people and you've
7 already identified 48, maybe there's no issue. But if it turns
8 out it's 8,000 people and you've only identified, you know,
9 maybe 100 through this other process, maybe there's an issue.
10 So we don't know the scope of the issue yet. All right?

11 I do take the defendants' point that cautious counsel are
12 probably going to overpublish the litigation hold notices;
13 right? So the sheer difference in the numbers is not alone
14 going to be all that dispositive to me, but at least it helps
15 us to identify whether there's even a problem here. All right?
16 And we'll know by Friday is what I want to do; right?

17 If there is still a problem after Friday, why don't you
18 file a joint letter -- discovery letter brief by mid next week
19 because I already know the issue; right? You just have to
20 update me on what the number problem is if you think there
21 still is one, and get me a letter brief by mid next week.

22 **MR. WARREN:** Your Honor, may I request a clarification
23 on that?

24 **THE COURT:** Sure.

25 **MR. WARREN:** Okay. Thank you.

1 So, first, I think it would be helpful to understand to
2 make sure that the number we're provided are individuals on a
3 lit hold for this case.

4 **THE COURT:** Oh, yeah. Yeah. Yes.

5 **MR. WARREN:** I take it that's the point of the dates.
6 Okay. Because, you know, there's lots of other litigations
7 that these defendants are on.

8 Would it be workable from the Court's perspective to
9 simply have that number and those dates submitted directly to
10 the Court so that we can maybe skip a step if you're already
11 apprised of the issue and you get the denominator?

12 **THE COURT:** Sure.

13 **MS. SIMONSEN:** Your Honor, if I may, I don't think
14 this is going to be helpful at all in illuminating a potential
15 issue. I can say that for Meta there will be a large number of
16 individuals on our lit hold, and that's because we have taken a
17 very overly cautious approach. It's not going to inform them
18 at all of whether we missed key custodians.

19 We have a very limited time to complete discovery. We
20 produced 50,000 documents to plaintiffs. They have the names
21 of folks in connection with the state AGs' multiyear
22 investigation involved in the exact issues they are suing on.
23 We've given them the names of 52 -- 48 custodians. They came
24 back with 52 they said they wanted. We've already agreed to
25 add 18.

1 I do want to note just one additional item, Your Honor,
2 which is that we have produced organizational charts,
3 essentially reporting line information, for all 66 custodians
4 that we've agreed to use with all of their direct reports and
5 all of their reports going up to Mark Zuckerberg, identifying
6 the teams that they were on.

7 They have every potential piece of information they could
8 need to identify potential custodians, and it simply isn't
9 going to be helpful or resolve the issue for us to disclose the
10 sheer number of people on our litigation hold.

11 We're happy to continue conferring with plaintiffs. We've
12 got another conferral scheduled with them I believe for
13 tomorrow or Wednesday to talk about the custodians that we told
14 them we wouldn't agree to add that they wanted on the basis
15 that we believe they have cumulative information of other
16 custodians, and we identified for them exactly who those other
17 custodians are.

18 And we invited them to come back to us, as is their burden
19 under the law after we've identified custodians, to tell us why
20 they believe those individuals are likely to have unique
21 information.

22 And this is an unusual case where they have so much
23 information from this multiyear, multistate Attorney General
24 investigation that, really, the parties are not on so different
25 a playing field in terms of identifying the folks that they are

1 interested in.

2 I would also note that as of this morning, they've already
3 managed to notice the depositions of 32 witnesses. I think
4 particularly with respect to Meta, and other defendants may
5 feel the same way and are free to speak to this, it's just not
6 going to be helpful to produce that number and it's going to
7 lead to more letter briefing on an issue that, again, is going
8 to distract from -- we need to get these documents out the door
9 to them.

10 **THE COURT:** Let me ask you. Do you know roughly how
11 many people have gotten a litigation hold notice? Just
12 roughly.

13 **MS. SIMONSEN:** I don't have the number in my head. I
14 know that it's significantly greater than 52, and 66 at this
15 point is the number of custodians we've agreed to use.

16 **THE COURT:** All right. So specific to Meta, why -- I
17 guess, why do you actually need -- will a list of -- I'm just
18 going to pick a number -- like, will a list of thousands of
19 people who got the litigation hold help you in any way?

20 **MR. WARREN:** Yes.

21 **THE COURT:** How?

22 **MR. WARREN:** I think we've now scoped the problem;
23 right? Step one was: Is there actually a large denominator of
24 people who got the hold? And now we know the answer is yes.

25 We don't have an org chart for every one of the defendants

1 TikTok hasn't produced that, for example, so --

2 **THE COURT:** Let's stick with Meta first because you
3 made an argument specific to that.

4 **MR. WARREN:** Fair enough.

5 With respect to Meta, the issue we're facing is Meta
6 provides custodians and we provide other custodians, and they
7 say, "Well, the ones we've handpicked already had similar
8 documents, so you don't need these other ones."

9 And that puts in an impossible situation of not actually
10 getting the universe of the material and not knowing which of
11 those custodians is going to wind up being -- having the --
12 having the information that's the most probative for our case
13 and understanding what the outer bounds of that are will just
14 drive efficiency in this process.

15 Let us know who the potential custodians are, and then
16 it's incumbent on us to actually make educated, informed
17 guesses about who is going to have that information presented
18 to defendants.

19 Right now we're working from ground up, you know, largely
20 on information that we never requested in the first place that
21 was developed through the AG investigation. I understand it's
22 been produced to us. You know, that's not really information
23 the plaintiffs ever, like, requested in that way. We don't
24 know what requests they were, you know, targeted towards when
25 they were produced.

1 You know, the notion that we are already far along in the
2 process and have everything we need to resolve this I don't
3 think carries water.

4 You know, we haven't even received any of the custodial
5 files for, you know, those that we have charted. I understand
6 that there's still time on that clock, but it is early days and
7 I think the case law is clear that part of the utility of
8 getting the names and titles of people on custodial lists is to
9 make the ESI process more efficient. And the *Canada* case from
10 the District of Nevada says that pretty clearly.

11 Also, this information just isn't privileged, and the main
12 argument they've advanced is that it is. Well, it's not.
13 There's case after case in this court saying that the names and
14 titles and the dates on which litigation holds were sent is not
15 privileged material, it's not attorney-work product. So we're
16 simply asking -- and there's simply no burden. They have a
17 list. If we just get the list, it will take the dispute off
18 the table, put us in a position to make more informed choices
19 about the custodians that we want to press for.

20 **MS. SIMONSEN:** Your Honor, the plaintiffs did request
21 these documents. It was the first thing they asked for when
22 we -- when this MDL was created. They asked for the Meta and
23 TikTok defendants, and Snap and YouTube to the extent it
24 applied to them, to reproduce all the documents that they had
25 produced to the Attorneys General in underlying investigations

1 that they represented we're investigating. I don't know if
2 they used the words "nearly identical," but they acknowledged
3 that it was substantially overlapping investigations.

4 In addition, the documents that we reproduced to them were
5 the documents that Judge Gonzalez Rogers identified as being
6 responsive to the issues in these cases by reviewing the CIDs
7 in response to which we produced the documents.

8 On the point about knowing the names or titles, I heard
9 Your Honor merely to order us preliminarily to produce the
10 number of people on the litigation hold. The names are clearly
11 privileged protective work product information. Outside of a
12 situation where there is some kind of belief that the
13 preservation process hasn't been complied with, that is
14 protected work product information, particularly when there are
15 reasonable alternative, cooperative ways for the parties to get
16 at the information.

17 And that's exactly what we have here. We've been working
18 very closely with the plaintiffs. We've identified 66
19 custodians we'll agree to use. We've heard from them on the
20 ones that they want to add.

21 And, furthermore, we are under the law, and this is the
22 *Emerson vs. Iron Mountain Information Management Services* case.
23 Under the law, what we have to do as a producing party is
24 select the custodians we deem most likely to possess responsive
25 ESI and search their electronic records and tell the other side

1 which custodians and search terms we used.

2 We have an obligation to identify the folks with the most
3 responsive, relevant information, and we've done that. Letting
4 plaintiffs know the sheer number of people on our litigation
5 hold, many of whom are not the ones with the most relevant
6 information, which is something they contest through the
7 documents and extensive information they have about our
8 custodians, isn't going to be productive toward resolving this
9 dispute.

10 So for all of those reasons, we would submit, Your Honor,
11 we need to be moving forward with actually getting that list of
12 custodians pinned down, which I think we're nearly -- we should
13 be nearly about to do with a conferral this week so that we can
14 get their documents, review them, and get them out the door.

15 If this process drags on any longer with plaintiffs
16 considering X -- you know, dozens of additional names when we
17 haven't even identified them as people with highly -- you know,
18 highly likely to have relevant information, it's not going to
19 advance the process.

20 **MR. WARREN:** May I, Your Honor?

21 **THE COURT:** Okay.

22 **MR. WARREN:** I don't mean to cut you off.

23 **THE COURT:** No, if you have a reply, go ahead.

24 **MR. WARREN:** I do have a reply.

25 This is an issue with respect to all four defendants, and

1 there is a process that's been working somewhat more
2 effectively with Meta than with the other defendants. For
3 Snap, for example, we only have 15 custodians. That does not
4 leave -- and we don't have a voluminous AG investigative
5 production as Meta is asserting. You know, there wasn't any
6 such thing in Snap.

7 We have relatively very, very little, numbering more in
8 the hundreds than in the thousands. I don't want to
9 misrepresent an exact number, but it's substantially less than
10 we have with Meta. So there is a live issue there.

11 As far as, you know, slowing things down, they can produce
12 these lists to us this afternoon. We can review them, you
13 know, over the next four days and get back to them by -- in a
14 week. I mean, this can be very, very tight and quick, and I'm
15 happy to represent that we will meet deadlines along that line
16 if that's the issue.

17 Simply put, the case law does not indicate that this
18 material is privileged. *Doe vs. Uber, In Re: eBay Antitrust*
Litigation, Thomas vs. Cricket, uniformly say that while the
20 content of the litigation hold notices themselves is
privileged, something we're not seeking, the names and titles
22 and dates of the litigation hold is not privilege material. So
23 that's just not a valid legal basis on which to withhold this
24 material.

25 **MS. SIMONSEN:** If I may respond on that point,

1 Your Honor.

2 Again, it is only in the context of where there's a
3 dispute about whether preservation has been sufficient that
4 Courts have allowed the production of names. *Personal Web*
5 *Technologies LLC vs. Google*, the Court denied discovery into
6 not only all dates of litigation holds in terms of when they
7 were circulated, but also the recipients of such notices. And
8 we cite a number of other cases in our briefing for that point.
9 So these are privileged and protected.

10 **THE COURT:** All right. So, first, there's not going
11 to be a 30(b)(6) deposition on this issue. I think it should
12 be -- if it's going to get resolved, it's going to get resolved
13 through the exchange of lists.

14 For each of the other defendants, does anybody have an
15 estimate of how many -- just the number of how many
16 custodians -- people, not custodians -- received litigation
17 hold notices? I mean, that's the same question I asked Meta.

18 Unless, Ms. Simonsen, you know.

19 **MS. TELLER:** Your Honor, this is Faye Paul Teller from
20 Munger, Tolles & Olson for Snap.

21 I don't have the exact number for you. I can give you a
22 magnitude, which that it's a multiple of what has been
23 discussed in this case.

24 I just wanted to note for Snap in particular that the
25 number of custodians we've suggested has been highlighted.

1 I would also note that I haven't checked the numbers, but
2 in plaintiffs' own briefing, they talk about the size of Snap
3 as compared to Meta. It's about a 30th of the size, so I don't
4 think that should be entirely surprising.

5 We are in the process of meeting and conferring on this.
6 We disclosed a list of 15 people on the 8th. We haven't yet
7 conferred but not because we haven't said we're available. I
8 believe we have time on the calendar on Friday.

9 And as has been discussed quite a bit, there's a
10 deposition for Snap scheduled next Wednesday in which we will
11 have a witness who will be prepared to talk about the various
12 departments and in some cases individuals within Snap working
13 on these issues.

14 **THE COURT:** Okay. Can I hear from the other
15 defendants in terms of just the numerosity question?

16 **MR. MATTERN:** Good afternoon, Your Honor. David
17 Mattern on behalf of the TikTok defendants.

18 I don't have an exact number in mind right now, but I
19 think it's in the hundreds. It reflects we're a more recent
20 company.

21 And, similar to Meta, we've already produced 17,000
22 documents to plaintiffs, and we'll likewise be putting up a
23 30(b)(6) deponent in a week that will be able to speak to
24 topics about organizational structure.

25 **MR. DONAHUE:** Matt Donahue from Wilson Sonsini for the

1 YouTube defendants.

2 I also -- unfortunately, I don't have a number offhand. I
3 don't know what it is, but it would be some number larger than
4 what the current custodial discussions are, but we don't think,
5 again, that's necessarily representative.

6 **THE COURT:** Multiples larger or just like a handful
7 larger?

8 **MR. DONAHUE:** I -- honestly, I don't know that
9 standing here today.

10 **THE COURT:** All right.

11 **MR. DONAHUE:** I think we're still -- I think there may
12 still be discussions going on about the custodians too --

13 **THE COURT:** All right.

14 **MR. DONAHUE:** -- so it's a moving target.

15 **THE COURT:** Okay. So on the privilege issue, I agree
16 that the names, titles, and dates, that's not privilege
17 information. It's what would show up on a privilege log. So,
18 for example, if this were a case where documents that postdate
19 the complaint still had to be logged on a privilege log, you'd
20 be putting exactly that information on a privilege log. All
21 right?

22 So I'm going to rule against you, Ms. Simonsen, on the
23 privilege issue. So the names, titles, and dates of the
24 litigation holds, that information, which is just what you'd
25 see in a privilege log, is not -- is not privileged and needs

1 to be disclosed.

2 Now that I understand the scope and the numbers, we can
3 avoid my approach of trying to take this piecemeal. By
4 Wednesday I want the defendants to produce, you can do it in
5 privilege log format, the names, titles, and dates of the
6 litigation hold notices that those people -- that your
7 employees got.

8 **MS. SIMONSEN:** Your Honor, respectfully, I mean, I
9 just have to make the record.

10 This is a very different situation from a privilege log.
11 With a privilege log we're producing responsive documents and
12 then we're identifying who was communicating with whom on them.

13 The disclosure of the individuals we've identified as
14 likely to have responsive information for purposes of
15 preservation clearly reflects attorney work product, and that's
16 like cases like *Personal Web Technologies* and the others we
17 cited have held that the names are themselves privilege.

18 And I would submit, Your Honor, that particularly with
19 respect to Meta, I did not hear counsel even respond to any of
20 the points I made about why for Meta this shouldn't have to
21 happen; and for that reason, I believe that for Meta the list
22 and the people on it should not have to be disclosed. We have
23 gone above and beyond.

24 **THE COURT:** On that point it's up to the plaintiffs.
25 They've committed to finish their review within a week and not

1 delay the custodian discussion because of the disclosure of
2 these lists. Right? I'm going to hold you to that.

3 **MR. WARREN:** As you should, Your Honor.

4 **THE COURT:** All right. So -- and if they can't make
5 good use of the list because, as you said, it's too voluminous
6 or it doesn't give the information, that's up to them. Right?
7 They're the ones saying they need it; right?

8 And so I'm not going to substitute my judgment for them
9 because I haven't seen it -- right? -- and I don't know what
10 use they're going to make of it. You know, I'm, frankly, a
11 little skeptical that having a list of thousands of people is
12 going to help advance the ball significantly.

13 But, you know, as long as you don't delay the custodian
14 discussion, I'm going to order this. All right?

15 And I understand you want to preserve your arguments for
16 the record, but I just don't think that simply the names,
17 titles, and dates are privileged information.

18 **MS. SIMONSEN:** Understood, Your Honor.

19 Just for my client, I have to state that we're going to
20 need to take back whether we need to raise that with
21 Judge Gonzalez Rogers just because we do believe it is
22 privilege and protected. We'll, of course, take Your Honor's
23 ruling in mind, but I just did want to note that given our
24 position and where we believe the case law is on this issue and
25 the fact that the plaintiffs have not pointed to a single

1 concern with our preservation to date, which is the only
2 circumstance in which courts have allowed production of the
3 names of folks on the litigation hold.

4 **MR. WARREN:** Your Honor, that is not the only
5 circumstance in which courts have allowed the production of
6 this material, and I'll leave it there. I just disagree as a
7 matter of law.

8 **THE COURT:** Okay.

9 All right. Anything further on this issue?

10 **MR. WARREN:** No, Your Honor.

11 **MS. TELLER:** Your Honor, Faye Paul Teller from Munger
12 Tolles for Snap.

13 Just one logistical question.

14 **THE COURT:** Yeah.

15 **MS. TELLER:** Bearing in mind somebody in our office is
16 going to have to put together this list, I don't think the
17 names by Wednesday is a problem. I am a little worried about
18 making sure that we have accurate titles just in terms of some
19 people might have multiple titles. And so I don't know whether
20 we need to provide all of those and the dates, that perhaps we
21 provide the names on Wednesday and by Friday provide some of
22 the additional information you've suggested.

23 **MR. WARREN:** I have no problem with that, Your Honor,
24 provided that we get a week from when they actually do the
25 thing Your Honor has ordered them to do.

MS. TELLER: That's fair, Your Honor.

THE COURT: That's why I encourage discussion among counsel to reach agreement, so...

MR. WARREN: Thank you, Your Honor.

MR. MATTERN: Your Honor, David Mattern for the TikTok defendants.

I don't want to reargue but just note so the record's clear that the TikTok defendants want to preserve the same objection that Ms. Simonsen articulated.

Thank you.

MS. SIMONSEN: If I may make just one additional point for the record.

THE COURT: Sure.

MS. SIMONSEN: I just want to point to the cases that plaintiff cited and explain to Your Honor that they were all in the context of a case where there was a question about preservation.

In the *Doe vs. Uber Technologies* case, plaintiffs alleged that Uber was not meeting its document preservation obligations under the --

(Official Reporter clarification.)

MS. SIMONSEN: In *Uber*, the plaintiffs alleged that Uber was not meeting its document preservation obligations under the Court's protective order, and that is why the Uber plaintiffs requested and the Court granted an order requiring

1 Uber to disclose the identities of its litigation hold
2 recipients in a situation where preservation was at issue.

3 In the *Cohen case*, the *Cohen vs. Trump* case that they
4 cite, in a prior decision had permitted limited discovery
5 concerning a litigation hold based on potential spoliation
6 issues.

7 In the *Canada*, there was likewise a concern, quote,
8 "whether defendants disabled all automatic deletions once the
9 litigation hold was in place."

10 So in all of these circumstances, it's clear that this is
11 protected work product information. If the plaintiff can point
12 to some reason to believe that preservation was improperly
13 conducted, then that may be a basis to overcome the attorney
14 work product that otherwise applies to the identity of the
15 individuals on a litigation hold, but they haven't done that
16 here.

17 And so for that reason, at a minimum, Your Honor, I would
18 ask that you return to your original holding, which was to give
19 them a number of individuals on the custodian list. I think
20 that we probably could get comfortable with that from a
21 privilege and work product perspective without having to delay
22 proceedings with a potential objection in light of the case law
23 and these points that we made.

24 **THE COURT:** No. I mean, two points to that. I've
25 already ruled, so I'm not going to rerule and reconsider that.

1 And I just -- what I don't understand is your argument
2 that if they're not privileged in one context, how are they
3 privileged? Either documents are privileged or they're not;
4 right? It doesn't depend on the context.

5 And so while I understand your attempt to distinguish
6 those cases, if they're not privileged, they're not privileged.

7 **MS. SIMONSEN:** Well, it's not the documents that are
8 not privileged. It's the identity of the individuals that we
9 as lawyers through analysis --

10 **THE COURT:** If the information is not privileged in
11 one context, I fail to see how its privileged in another.

12 **MS. SIMONSEN:** Because the individuals on a document
13 that is determined to be responsive is simply almost
14 administrative information about who's on the communication.

15 **THE COURT:** No. The cases cited by plaintiffs are all
16 in the litigation hold disclosure context; right?

17 **MS. SIMONSEN:** But in those cases there was a dispute
18 about whether preservation had been adequately undertaken, and
19 that is not being alleged here.

20 **THE COURT:** But, again, if the litigation hold
21 recipients is not privileged in that context, I fail to see how
22 its privileged in this context.

23 **MS. SIMONSEN:** I think the issue is that it's probably
24 addressed in those cases under a work product standard; and so,
25 of course, in the work product standard, it can -- the

1 protection can be overcome. That's why it's not a privilege
2 issue; it's a work product issue.

3 **THE COURT:** I think you're confusing the fruits of
4 your work product, which is like a brief or something that you
5 produce to the other side, versus the actual work product how
6 you got there.

7 Simply providing the names, dates, and titles of the
8 people gives the plaintiffs no information on what method, what
9 work analysis you did to get the names onto the list. That's
10 your work product, not the results of your work product. A
11 brief is not -- is work product in the sense -- in the broader
12 sense that you're trying to argue, but that's -- you don't
13 waive work product by filing a brief.

14 **MS. SIMONSEN:** Right. But the individuals on a
15 custodian list do reflect the attorney work product in terms of
16 the analysis that we would do --

17 **THE COURT:** What you write in a brief reflects your
18 attorney analysis on what to argue in a case.

19 **MS. SIMONSEN:** But that's always the case with respect
20 to briefing; right? I mean, we're working on behalf of our
21 clients. But the underlying thinking and thought process that
22 went into the brief or the prior drafts would obviously not be.
23 Those would be protected privilege communications.

24 **THE COURT:** I'm not asking you to submit prior drafts
25 of your litigation hold notices or even the prior drafts of the

1 lists of people who could be on your litigation hold recipient
2 list.

3 **MS. SIMONSEN:** Well, I think I've made our points,
4 Your Honor --

5 **THE COURT:** I think, yes.

6 **MS. SIMONSEN:** -- and cited to the case law that
7 supports it. I appreciate --

8 **THE COURT:** I'm sure plaintiffs will brief the issue
9 well to Judge Gonzalez Rogers if it gets that far.

10 **MS. SIMONSEN:** Thank you, Your Honor.

11 **THE COURT:** All right. Next issue is submission of
12 the joint deposition status chart; is that right?

13 **MS. SIMONSEN:** Yes, Your Honor.

14 **THE COURT:** All right.

15 (Pause in proceedings.)

16 **THE COURT:** All right. So why do you want it filed on
17 the docket? What's the purpose of that?

18 **MS. HAZAM:** Your Honor, there's obviously a strong
19 presumption in favor of public access, and the defendants here
20 would need to demonstrate good cause, specific prejudice, or
21 harm that would result from merely listing their --

22 **THE COURT:** I understand.

23 **MS. HAZAM:** -- employees' names and titles in this
24 chart.

25 **THE COURT:** Right, but why do you want it on the

1 docket?

2 **MS. HAZAM:** These employees I think are important to
3 the case overall, to the understanding of who played important
4 roles at these companies; and if they are going to be required
5 to be listed in a chart to the Court, we believe that like most
6 filed documents, you would have to meet a burden to seal that
7 document, and I don't think that burden can be met here.

8 And to be clear, Your Honor, plaintiffs are not asserting
9 that any adult plaintiff or adult witness related to a
10 bellwether plaintiff's name should be sealed either presuming
11 that there isn't associated confidential info about their
12 conditions or treatment, which there would not be.

13 And for the same reasons, we don't believe that there's
14 any basis in this chart that is being filed with the court and
15 would normally be subject to public access should be sealed
16 either. We don't believe that the standard required under the
17 cases is met.

18 **THE COURT:** What's the harm in filing it on the
19 docket?

20 **MS. SIMONSEN:** Your Honor, this is obviously purely an
21 administrative filing. It's not a merits-related filing. And
22 in those circumstances, what we need to do is show some kind of
23 good cause to protect the identity of the parties. And I think
24 by pointing out that these are -- they're highly sensitive
25 issues involved in these cases, such that disclosing the

1 identity of the individuals that these plaintiffs have targeted
2 for depositions could lead to harassment.

3 It's a highly high-profile matter, and it is for that
4 reason that Judge Gonzalez Rogers granted our motion to seal to
5 redact the names of all employees with the exception of some
6 very high-level employees, such as the CEO of Meta, in our
7 master complaint. And I believe that that was with plaintiffs'
8 consent, so it's a little surprising that now they're taking
9 this position.

10 I share Your Honor's curiosity about why it is that they
11 want this if not for some reason that is tangential to the
12 merits of the litigation.

13 At some point if these folks do get deposed and they
14 become witnesses in the case and filings are made that need to
15 reference their depositions, you know, that's a different
16 situation where the person has actually been deposed and we can
17 see if they're offering testimony highly relevant to the merits
18 of the case.

19 At this point, they're just anticipated deponents, and we
20 want to protect the privacy rights of these individuals at
21 least until the time that they're actually deposed.

22 And for that reason, we think we've met the good cause
23 standard, particularly in this case where this is just a chart,
24 it's an administrative chart to facilitate the Court
25 encouraging the parties to schedule depositions in, you know,

1 an expeditious manner.

2 And for that reason, we would submit that submitting them
3 by e-mail every month is perfectly acceptable. There's no
4 reason that it needs to be on the public docket at this time.

5 **MS. HAZAM:** Your Honor, if I may respond.

6 With regard to the plaintiffs' master complaint, actually
7 the large majority of the defendants' employees names that were
8 cited in that complaint were unsealed. There are two or three
9 names of low-level employees who, of course, were not intended
10 to be deposed at that point in time that we did agree to keep
11 sealed; but, otherwise, the employees' names in that complaint
12 are public.

13 The kind of potential harm that Ms. Simonsen is conjuring
14 for Your Honor today is entirely speculative at this point.
15 There is no record to suggest that any harm will ensue.

16 The standard set forth in various Ninth Circuit cases,
17 including *Kamakana, Phillips, The Center for Auto Safety*, is a
18 good cause means demonstrating specific prejudice or harm that
19 would result.

20 We don't think that has been demonstrated here, and we
21 think these employees as persons that we intend to depose in
22 this case, honoring Your Honor's guidance that we should not
23 put them on the chart unless we are virtually certain we want
24 to depose them, are relevant to the case and have value as
25 publicly accessible information in the absence of any standard

1 being met here.

2 **THE COURT:** Are you standing up because you want to
3 add something to this or --

4 **MS. HAZAM:** Sure. I'm sorry. The state AGs are
5 welcome to --

6 **MR. OLSZEWSKI-JUBELIRER:** No. My apologies.

7 Josh Olszewski-Jubelirer for the People of the State of
8 California.

9 The state AGs join in the PI/SD plaintiffs position and
10 add -- excuse me -- that the state AGs are public officials,
11 we're accountable to our constituents, and so we have an
12 interest in providing transparency over the litigation of this
13 case and how we're performing our public duties.

14 I will add -- excuse me -- we have some concerns over the
15 practicalities of an order requiring that the list be sent by
16 e-mail and not filed on the public docket.

17 The defendants have raised concerns about, you know,
18 whether those individuals' names can be disclosed. As my
19 colleague mentioned, many of the names are disclosed in our
20 publicly filed complaints, and so we would need some
21 clarification.

22 It's not clear to me the implication of the defendants'
23 position. Are they -- would they wish to seal the names of
24 those deponents if we need to discuss disputes over their
25 depositions in a discovery management conference statement?

1 I think the request that's been made so far has no -- the
2 blanket request and suggestion that the good cause standard has
3 been met I think is unwarranted when we get down to the
4 specifics of these individuals and the lack of evidence to
5 support that request.

6 **MS. SIMONSEN:** Your Honor, I think we can cross that
7 bridge when we come to it. At this point this is just a list
8 of individuals they plan to depose. We could meet and confer
9 about which names we're willing to redact and which we're not,
10 but I would submit that it's just a lot administratively
11 simpler at this point to submit it by e-mail.

12 We have a lot of more important things to do between now
13 and September 20th on the substantial completion deadline than
14 file motions to seal certain names on a spreadsheet of
15 potential deponents.

16 So for that reason, again, we repeat that we would very
17 much think it would make sense and we have shown good cause
18 to -- for this administrative filing, simply submit it by
19 e-mail.

20 I also just want to note that I think the names in the
21 complaint were sort of a mix of high-level employees and
22 lower-level employees. I don't know that for certain, and I
23 want to double check; but, you know, I think there probably are
24 a sufficient number of people on the list that they've noticed
25 that we would treat the same way we treated the employees whose

1 names we asked to redact in the complaint.

2 So for that reason, I just think we're going to save a lot
3 of time and energy if we just submit this -- agree to submit
4 this list by e-mail, cross the bridge with respect to other
5 disputes at a later time.

6 **MS. HAZAM:** Your Honor, I think this is creating a
7 false hurdle for us to go over here. We do not have any basis
8 for sealing something that would otherwise be public here.

9 There has been no showing, far from good cause shown, here.

10 And these are relevant witnesses to the case. They are
11 generally higher-level witnesses. So to say that we will save
12 ourselves trouble is to set up a false comparator because the
13 comparator in Ms. Simonsen's rendering of things is we have to
14 go through partial motions to seal. There shouldn't be any
15 sealing here; and if there isn't any, there's no burden
16 whatsoever. It's just a public filing, which is what we intend
17 to do with the names of the plaintiffs and our witnesses.

18 **MS. SIMONSEN:** We've shown good cause for the same
19 reason that we showed good cause when we got the names of
20 certain employees redacted in the complaint, which plaintiffs
21 agreed with. So I don't understand the repeated point that we
22 haven't shown good cause.

23 These are not all high-level executives. It hasn't been
24 shown that they're all highly relevant to the case yet; right?
25 It's plaintiffs' conclusion that they are. That's what they

1 want to explore. And so we would take the same position with
2 respect to certain names on this list.

3 We have shown good cause by citing the case law that is
4 the type of case law that we cited when we moved to redact
5 certain names in the master complaint that
6 Judge Gonzalez Rogers granted.

7 So I think we've shown good cause. The question is:
8 Just, you know, do we want to -- does Your Honor need us to go
9 through that administrative burden for every time we file one
10 of these lists on the public docket or can we just submit them
11 by e-mail every month?

12 **MS. HAZAM:** Your Honor, I don't think there was any
13 showing of good cause when it came to the complaint. There was
14 an agreement to a very small number of names. I think it was
15 two out of many names that were mentioned in that complaint,
16 and it was not based on good cause. No such showing was made.

17 We agreed because at that point those two were very
18 low-level employees. We had not gotten to the point of
19 deciding who we might want to depose, as we have here. We have
20 taken the step of committing to depose these plaintiffs
21 understanding that Your Honor does not want us to remove them
22 from the list.

23 So I simply do not believe that there is any showing here.
24 It's entirely speculative. These are witnesses whose
25 admissions may be party admissions in their testimony, and we

1 certainly shouldn't be in a situation where their names have
2 been disclosed, say, in our complaint or other documents but
3 somehow have to be sealed here and figuring out what the future
4 implications of that are in coming filings.

5 **THE COURT:** Okay.

6 **MS. LADDON:** Your Honor, I'm not --

7 **THE COURT:** Did you stand up because you want to say
8 something?

9 **MS. LADDON:** Just very briefly, Your Honor.

10 **THE COURT:** Sure.

11 **MS. LADDON:** Very briefly.

12 Good morning -- good afternoon, rather. Tarifa Laddon for
13 the TikTok defendants.

14 And we, of course, agree with the remarks that Meta's
15 counsel's made, but I do have to make very clear for the record
16 that at least for TikTok the harm is not speculative,
17 Your Honor, at all.

18 We have a list of about 14 names the plaintiffs have
19 provided to us that they -- of individuals that they want to
20 depose. These are not all high-ranking executives. These are
21 a lot of just regular folks who are going about their day and
22 doing their jobs.

23 And at least at TikTok we have had actual situations where
24 people receive threats and people's lives, regular everyday
25 people lives, are upended because the public has found out that

1 they're working for the company and involved in certain
2 projects, and that is specifically what we're trying to avoid
3 here.

4 This is essentially a discovery management document that
5 the Court has ordered us to produce. It's almost akin to a
6 meet-and-confer document, to be honest with you, about
7 individuals that they wish to depose for the Court's use and
8 ensuring that the process of noticing and taking depositions
9 goes quickly and expeditiously.

10 We do not file on the docket notices of deposition in the
11 ordinary course of litigation. Those are usually served
12 between counsel, and so I just wanted to make it clear that at
13 least for TikTok, Your Honor, this is not a speculative harm.
14 This is a harm that we take very seriously and we're concerned
15 for our employees.

16 **MS. HAZAM:** Your Honor, if I may, because that
17 interjected new information.

18 I certainly do not hear counsel saying that that's as a
19 result of anything in this case. I don't believe it to be. I
20 know none of the details. This is new information; but, again,
21 this is simply a list of employee names, titles, and defendant
22 who they work for.

23 **THE COURT:** Okay. So point number one, continue to
24 send the full chart to me by e-mail because I don't -- right?
25 But I'm also going to order that a redacted version of the

1 chart get filed promptly jointly sometime after the DMC
2 statement is filed, and you can work on that cooperatively.

3 I don't want -- you're going to redact from the chart that
4 gets filed addresses, e-mail addresses, any other personally
5 identifying -- I don't think there is any, but any other
6 personally identifying information, I doubt there's phone
7 numbers, but anything. So that the only thing that should be
8 on the chart is the person's name and their title essentially,
9 and probably the company they work for; right?

10 Because most of that -- I would assume for the large
11 majority of these people, that's probably up there on LinkedIn
12 or and the web somewhere anyway, but I don't want anything
13 personally identifying them or how to contact them on the
14 public filing. Okay?

15 **MS. HAZAM:** I understand, Your Honor.

16 **MS. SIMONSEN:** Understood, Your Honor.

17 The issue is not that merely knowing that the person works
18 for the company is going to compromise their safety. It's that
19 the plaintiffs have identified them as being involved in the
20 types of issues that the plaintiffs are suing the defendants
21 for. That is what puts their safety at risk.

22 And on the point about showing good cause, it is true that
23 plaintiffs previously agreed with us to redact certain names
24 from the complaint; but of course Judge Gonzalez Rogers has an
25 independent obligation to ensure that anything she allows to be

1 redacted is consistent with the law. We did --

2 **THE COURT:** On that point, in the meet-and-confer
3 process and putting together the joint redacted version list,
4 if there are specific individuals that a defendant thinks ought
5 to be redacted even as to their names or their title or one
6 or -- one or either or more information, I encourage and order
7 the parties to work that out.

8 So if it's a sufficiently low-level person or you have
9 specific information that one person has for some reason, you
10 know, received harassing, you know, contacts in the past
11 because of this case or because of some other case, you know,
12 I'm sure you can work out if there needs to be full redaction
13 of one or two individuals, if it need be if you can show it;
14 and if you can't, I hope it doesn't come to a dispute, but you
15 can try to raise it with me. But this is something you should
16 be able to work out. But without their contact information
17 within the public filing, that should address most of the
18 concerns.

19 And to the plaintiffs, while their names and who they work
20 for is probably enough, the risk of harm here is that once I
21 allow any kind of personal identifying information to be filed
22 in the public docket, you can't unring that bell. And so if
23 there is harm potentially here for harassment or some kind of
24 untoward contact from third parties or people out there in the
25 public, I can't cure that after the fact by order -- if I allow

1 the personally identifying information to be filed.

2 So as a precautionary measure and using my discretion, I
3 want all that redacted in the public filings. Okay?

4 **MS. HAZAM:** Understood, Your Honor. In fact,
5 plaintiffs are quite agreeable to redacting contact
6 information, addresses, e-mails, phone numbers, et cetera.

7 I will say that defendants have not provided any specific
8 allegations of threats that people have faced. Certainly if
9 they come forward and do so, we are all ears to that.

10 I do want to make clear that many of these names are
11 already in the public realm associated with many of the
12 allegations of this complaint if not in the complaint itself.

13 **THE COURT:** In which case I'm sure there won't be any
14 dispute as to filing the unredacted -- the redacted but, you
15 know, unredacted as to names of those people.

16 **MS. HAZAM:** Thank you, Your Honor.

17 **MS. SIMONSEN:** Thank you, Your Honor.

18 **THE COURT:** All right. That concludes all the ripe
19 discovery disputes and we're done; right?

20 **MS. SIMONSEN:** I don't believe we are, Your Honor.

21 **THE COURT:** All right. So I'm going to turn to there
22 was a -- even though it's under the not currently required
23 Court action, there is actually a request -- let's see... it
24 says implied request on the TikTok Zoom video dispute.

25 Who's going to speak to that?

1 Enter your appearances.

2 **MR. WEINKOWITZ:** Mike Weinkowitz on behalf of the
3 plaintiffs.

4 **MS. LADDON:** Tarifa Laddon with Faegre Drinker on
5 behalf of TikTok.

6 **THE COURT:** So I'm told in your report here, the open
7 issues will be ripe to be heard by the May DMC hearing, and the
8 parties will file a letter brief pursuant to my standing order.

9 Just so you're all clear, since this is an issue as to
10 TikTok alone, I don't want to take up time at the DMC on this.

11 So you file the letter brief if you still haven't resolved
12 it. Once I get the letter brief, I'll set a separate
13 hearing --

14 **MR. WEINKOWITZ:** Thank you, Your Honor.

15 **THE COURT:** -- for this issue. Okay? But
16 hopefully -- hopefully you can work it out.

17 **MR. WEINKOWITZ:** We're still talking.

18 **MS. LADDON:** That's right. I have every confidence,
19 Your Honor.

20 **THE COURT:** All right. And then the next -- yeah, the
21 next -- this is under unripe issues that you're still
22 requesting it is Number G, "Meet and Confers Regarding RFPs
23 TikTok."

24 Plaintiffs request the Court instruct the parties that
25 failure to comply with Rule 34 may waive objections and that

1 they should endeavor to memorialize its positions in writing in
2 advance of attorney conferences or have the corporate client
3 present at each such conference to facilitate the parties'
4 negotiations.

5 So if a party has properly objected to a document request,
6 then there's no waiver by failing to not memorialize it either
7 before or after a meet and confer. I mean, you don't suddenly
8 waive an objection by not memorializing it later after a meet
9 and confer. So that -- I know of no law that says that.

10 **MR. WEINKOWITZ:** Your Honor, I think our only concern
11 is that in the request to produce, we are getting a litany of
12 boilerplate-type objections, and we have no idea whether or not
13 documents are being withheld based on a specific objection
14 because there's a ton of objections. And we can't get any
15 clarity on whether or not, based on that objection, a
16 document's being withheld; based on this objection, a
17 document's being withheld.

18 And under Rule 34(1)(c), that's a requirement. We have --
19 the plaintiffs have a right under Rule 34 to know precisely
20 which documents are being withheld based on precisely which
21 objections.

22 And that's our request, which is simply that they go back
23 and they redo their RFPs so that we can tell what's being
24 withheld based on the specific objection that is being
25 asserted.

1 **MS. LADDON:** Your Honor, I'm surprised to see this in
2 here because the reality is we've been meeting and conferring a
3 ton. They served, I think, 300 RFPs. We've responded. We've
4 had, what, six hours of meet and confers, and we've resolved
5 most of the disputes. I don't see a bunch of substantive
6 disputes here before Your Honor needing to be resolved.

7 So the meet-and-confer process is working. We're all
8 showing up in good faith, and we're trying to figure out what
9 they really need. When they think -- when we think their
10 requests are overbroad, if they think our objections are
11 confusing or overbroad, we're working out in the
12 meet-and-confer process and complying with all the requirements
13 under the rules. So I don't know why this is really in here.

14 **MR. WEINKOWITZ:** Your Honor, that was utterly
15 unresponsive to what I just raised, which is we are getting a
16 slew of objections and we have no idea whether documents are
17 being withheld based on individual objections.

18 I can discuss the meet and confers separately, which I do
19 have some issues with; but on that particular issue, I have no
20 idea whether or not documents are being withheld based on an
21 objection; and under Rule 34, I think we're entitled to have
22 that so that we have an idea as to what is being withheld.

23 **THE COURT:** I assume in the meet and confers you're
24 trying to explain to them which documents are being withheld or
25 not --

1 **MS. LADDON:** Yes.

2 **THE COURT:** -- based on your objections.

3 **MS. LADDON:** Yes, and we've explained what we're
4 producing and what we are withholding. That's been part of the
5 meet-and-confer process this whole time.

6 **MR. WEINKOWITZ:** It remains unclear and unanswered.

7 We are having discussions in the meet and confers about
8 specific requests, but we do not now for any of the requests
9 when an objection is lodged whether a document is being
10 withheld based on that objection. We have nothing about that.
11 I wouldn't have raised it and brought it here, Your Honor, if
12 we had the information.

13 **MS. LADDON:** We're happy to continue meeting and
14 conferring if there's specific examples that counsel can sit
15 down and show us where we're not complying with the rules, but
16 we've been, I think, exhaustively meeting and conferring and
17 explaining exactly what we're producing and exactly what we're
18 not. But we're happy to continue to meet and confer; and if
19 this raises to the level of an actual ripe dispute that we need
20 to go through, we're happy to brief it more. But I just -- I
21 don't see the problem.

22 **MR. WEINKOWITZ:** I don't hear that the defense -- that
23 TikTok is indicating that they're not doing what I'm saying,
24 and I have specific examples that I could show you, Your Honor,
25 if you'd like.

1 I simply would like the defendants if they're going to
2 object based on whatever objection they lay out in the request
3 to produce to tell me whether or not they are or not
4 withholding documents. Very simple.

5 And I'm not hearing that they're not doing that. I'm
6 hearing that they want to meet and confer repeatedly over and
7 over again.

8 I'm laying out the problem, and I'm just asking for a
9 solution to the problem, which is a very reasonable solution.

10 **MS. LADDON:** We have been meeting and conferring over
11 300 very broad requests. We will continue to do so. We will
12 look at our discovery responses; and now that we know a little
13 bit more what they're asking now that we've spent all this time
14 together in meet and confer, we're happy to meet and confer
15 further to see if there needs to be some amendment. But we've
16 been very clear in terms of what we're producing and what we're
17 withholding.

18 **THE COURT:** Is there a specific category of documents
19 you're afraid that they're withholding based on an objection?

20 **MR. WEINKOWITZ:** The issue is, is I have no idea what
21 they're withholding based on any of the objections that they're
22 asserting.

23 **THE COURT:** Yeah, but do you have any -- that doesn't
24 answer my question. Is there a specific category or type of
25 document you think they're withholding based on their

1 objections that you're trying to ferret out?

2 **MR. WEINKOWITZ:** I'm trying -- I'm -- I can't answer
3 that question, Your Honor, because I have no idea what they're
4 withholding. That's the problem. I don't know whether they're
5 withholding a document based on any of the objections that
6 they're asserting because they simply won't tell me.

7 And I can tell you that this issue was just recently
8 ordered -- the defendants in both the hair relaxer and the
9 opioids case were specifically ordered to identify the
10 documents that they were withholding based on an objection.

11 Right now I can't answer your question because they won't
12 identify any documents that they are, in fact, withholding
13 based on any of the objections that they're asserting.

14 **THE COURT:** Okay. But --

15 **MR. WEINKOWITZ:** I just can't answer it.

16 **THE COURT:** What I'm hearing -- what I heard from
17 counsel for TikTok is that -- tell me if I'm wrong -- you said
18 that you were telling him what you were going to produce.

19 **MS. LADDON:** Yeah, and we've said -- we've said when
20 we're not producing documents in response to a request.

21 **MR. WEINKOWITZ:** They have not indicated specifically
22 which objections they are withholding documents on. They just
23 haven't done it.

24 If you look at the way they respond to the RFPs, we have a
25 series of objections and then we have an answer, but it doesn't

1 tell me whether they're withholding the documents based on any
2 of those objections at all.

3 I can't answer your question because they have not given
4 me the information.

5 **THE COURT:** Have you started producing any documents?

6 **MS. LADDON:** Yeah. We've produced, what, 17,000 last
7 year and another -- is it 500, 700 that we produced?

8 **THE COURT:** From your review of the documents they've
9 produced, do you have a suspicion that they're withholding some
10 category or swath of documents?

11 **MR. WEINKOWITZ:** First of all, Your Honor, the
12 documents that they produced last year were documents that they
13 had produced to the state AGs.

14 **THE COURT:** I know.

15 **MR. WEINKOWITZ:** So that's a whole separate set of
16 documents.

17 They have produced documents in response to what we call
18 the go-fetch RFP1 where we say "Go get this individual
19 document," and they have been responsive to that. I will give
20 them credit on that.

21 So I have no -- no specific -- on that set, I have no
22 suspicion that they have withheld any documents on that set.
23 I'm talking about the rest of the sets. Sets 2 to Set 9, they
24 set out a series of objections. They do not tell me whether
25 they're withholding those documents. I can't even have a

1 suspicion because they don't tell me anything at all.

2 **THE COURT:** Okay. What I'm hearing is a willingness
3 to continue to meet and confer on this issue. It sounds to me
4 like -- I mean, in normal practice as documents get produced,
5 the receiving party reviews them and they make reference to
6 other documents that weren't produced and you go back to the
7 producing party and say, "Hey, what about these?" I mean,
8 that's kind of -- you expect some of that. Right?

9 Now, you would expect the producing party to be fulsome in
10 its production and not prompt that but that, unfortunately,
11 does happen. Right?

12 All I can say is this is unripe because you still need
13 to -- apparently the plaintiffs don't understand what you're
14 actually withholding on the basis of your objections. So
15 you've got to tell them that at some level. You think you've
16 already told them that you've got to make it either clearer or
17 in some way make it more categorical. I don't know what it is
18 that they don't think they're understanding.

19 On the plaintiffs' side, you know, you've got to go
20 through the meet-and-confer process and, you know, if you
21 really think that they're somehow hiding some documents from
22 you, I mean, the standing order is clear. You elevate it to
23 lead counsel and you file a brief on it and explain to me in
24 more detail than we just don't know because that's not -- I
25 mean, that really -- anybody who serves discovery requests says

1 "I don't know what I don't have." Right?

2 But you need to explain to me why -- especially after
3 you've had time to review the documents, why you think that
4 there really is -- especially if they've made representations
5 as to what they're producing and what they're not, why that
6 there's something being hidden from you based on the basis of
7 these objections.

8 **MR. WEINKOWITZ:** Your Honor, I understand that, but
9 the problem is that we got -- we have a series of 20 or 30
10 objections.

11 **THE COURT:** I hear your complaint, but my
12 understanding is that -- you're -- she's been -- allegedly the
13 representation is made that she's been meeting and conferring
14 trying to explain what the objections are and what the
15 documents being produced in light of the objections are. I
16 assume that's what you're doing.

17 **MS. LADDON:** That's what our team's been doing. It's
18 been my colleague who couldn't be here today because of the
19 Passover holiday, so I wasn't personally in all the meet and
20 confers but I've gotten the full update, and my understanding
21 is that that's exactly what we've been doing.

22 We've been responding to document requests. We've been
23 clear about what we're producing, what we're not producing, and
24 we've been showing up to every meet and confer and talking in
25 good faith about these very issues.

1 **THE COURT:** Okay. So the risk is on you. If you
2 don't provide sufficient answers to plaintiffs' questions as to
3 what somehow they think you're still hiding the ball in some
4 way and not explaining what you're producing and what you're
5 not producing, then they're free to escalate it to a lead
6 counsel meet and confer and then file a motion on it, but then
7 the burden is on you to show why there's been a violation here.

8 Again, I'm not going to -- you know, I'm not going to look
9 kindly on unnecessary motion practice, especially where it
10 looks like you haven't sufficiently met and conferred. I'm not
11 hearing there's really good communication here, so I would
12 encourage better communication on this issue.

13 **MR. WEINKOWITZ:** Your Honor, we're having another
14 issue with meet and confers with TikTok that I'd like to
15 explain.

16 And what's happening is, is we will get a set of requests
17 to -- answers to requests to produce, and we will write them a
18 deficiency letter, and then it will take some time in order to
19 set up a meet and confer. And then when we finally do get a
20 meet and confer, we get -- and our deficiency letters are very
21 clear as to which requests we want to talk about. We get on
22 the meet and confer, and I go "Number 165, what's your position
23 on 165? You won't produce any documents."

24 And they say to me "We have to go back to the client."

25 "166?"

1 "We have to go back to the client."

2 "168?" This is repeatedly over and over again.

3 What's happening is it appears that what's going on in
4 these meet and confers is a lot of slow walking. They're
5 coming to the meet and confers without being prepared, without
6 a position on whether or not they will or won't produce a
7 document when it's raised, and then we have another two weeks
8 that goes by when we don't hear back about what the client's
9 position is. And I have to write five e-mails and six e-mails.
10 And then right now there are a series of requests to produce
11 that I am still waiting to hear from weeks ago.

12 I get that we asked for a very aggressive schedule. I get
13 it, but that doesn't mean that the meet-and-confer process can
14 be used to really delay the production of documents and over
15 and over again not give us an answer. We need an answer,
16 Your Honor.

17 **THE COURT:** My standing order at Section H,
18 subsection (1) says (as read) :

19 "Counsel for all parties involved in the dispute
20 shall undertake reasonably diligent efforts to confer and
21 attempt to negotiate a resolution of the dispute."

22 I assume no good lawyer here is going to be in contempt of
23 one of my orders, so I encourage everybody to do that.

24 Paragraph (2) of Section H of my standing order says (as
25 read) :

1 "Only after counsel and the parties have communicated
2 in those efforts but remain unable to resolve the dispute,
3 any party may demand a meeting of lead trial counsel for
4 the parties involved in the dispute at issue. To resolve
5 the discovery dispute, such meetings shall occur within
6 10 business days of the demand."

7 If you have communicated in those efforts but remain
8 unable to resolve the dispute, it is your right under my
9 standing order to demand the meet-and-confer lead counsel.

10 So your comments about slow walking, I'm not crediting
11 whether that's happening or not, but my standing order is
12 specifically designed to avoid unnecessary delay in the
13 resolution of discovery disputes. So I'm not going to
14 countenance arguments to me that the other side is slowing down
15 discovery when I give you -- I give all parties in my court
16 specific guidance on how to get expeditious rulings on
17 discovery disputes. All right?

18 **MR. WEINKOWITZ:** Understood, Your Honor.

19 **THE COURT:** All right. And you understand my
20 admonition as to being prepared on meet and confers?

21 **MS. LADDON:** I do 100 percent. And we take issue with
22 counsel's characterization of the meet-and-confer process and
23 100 percent stand by our participation pursuant to Your Honor's
24 orders.

25 **THE COURT:** I encourage good and effective

1 communication in meet and confers in trying to work things out,
2 so I take what you're saying but I'll hold you to it too.

3 Okay?

4 **MR. WEINKOWITZ:** Thank you, Your Honor.

5 **THE COURT:** All right. If I understand the e-mail
6 that I received, the final unripe but ripe dispute, I guess,
7 that hasn't been resolved is deposition topic seeking source
8 code adjacent information but only with respect to TikTok; is
9 that right?

10 **MR. MATTERN:** Good afternoon, Your Honor. David
11 Mattern on behalf of the TikTok defendants.

12 Yes. Our understanding is that plaintiffs have not
13 withdrawn this dispute as to TikTok although they've withdrawn
14 it as to Snap; and as noted in the DMC, it was not raised as to
15 Meta and YouTube who reserve all their rights.

16 **THE COURT:** Okay. So is it still really a dispute as
17 to TikTok?

18 **MR. WEINKOWITZ:** Yes, it is a dispute as to TikTok,
19 Your Honor, and is --

20 **THE COURT:** Okay.

21 **MR. WEINKOWITZ:** I can hand you up a copy of the
22 notice so that you can see precisely what the topics are.

23 **THE COURT:** Well, I already -- I mean, is it on what
24 they're calling the source code adjacent information?

25 **MR. WEINKOWITZ:** That's correct, Your Honor.

1 **THE COURT:** All right. I don't need to see the
2 notice. I understand what that is. Unless you --

3 **MR. WEINKOWITZ:** No, no. I'm saying I wanted to put
4 the topics in front of you so that you could see precisely what
5 the topics say, but that's fine. They just simply won't
6 produce a witness.

7 **THE COURT:** Okay. Why won't you produce a witness?

8 **MR. MATTERN:** Yeah. As Your Honor will recall, the
9 parties agreed not to seek source code discovery at this time,
10 and I believe what plaintiffs said at the last DMC when this
11 was discussed was unless and until defendants put it at issue,
12 which we have not.

13 The reason that -- so that's, I think, why we think this
14 is premature. If there is a point where they want to cross the
15 bridge to seek source code discovery, only then would it be
16 appropriate to have conversations about where that information
17 is stored.

18 But although I realize that they've characterized this as
19 what they're calling the source code adjacent, but it's not.
20 What they're seeking and as identified by, like, Getlab and
21 GitHub, they're seeking information about the repositories
22 where source code is stored.

23 They want description about how the source code was
24 changed, which is, again, a description about the source code.
25 They want information about comments or versions of source

1 code.

2 This is all stuff that there's a patent protective order
3 that lists out and defines as highly confidential source code
4 information the very information that they're seeking here. So
5 it's our view that it's more appropriate to defer this until we
6 come to the time when there is source code, you know,
7 discovery.

8 **THE COURT:** So on that point, I have a -- I'm not
9 going to -- I haven't gone back through the transcripts. I
10 have a memory of somebody on the plaintiffs' side telling me,
11 maybe it was Mr. Previn, that we weren't seeking a source code
12 protocol at this time because they weren't -- the plaintiffs
13 weren't seeking source code, but they used the phrase "but that
14 doesn't stop us. We still reserve the right to seek source
15 code adjacent information."

16 Tell me --

17 **MR. WEINKOWITZ:** That's, correct, Your Honor. That
18 was --

19 **THE COURT:** Tell me if I'm wrong from the defense
20 side.

21 **MR. MATTERN:** That's correct. It was Mr. Warren that
22 noted that. And in the response, we also noted that we didn't
23 understand what source code adjacent meant and thought that it
24 was something that would -- that was ambiguous and would need
25 to be clarified.

1 **THE COURT:** Okay. So -- but if the only issue is
2 whether the current protective order covers the confidentiality
3 of what they're calling the discovery on source code adjacent
4 information, then you're free to come up with either a source
5 code protocol or an amendment to the protective order, if you
6 want, to cover source code related, you know, even more highly
7 confidential information using the patent protective order as a
8 template, but that doesn't -- that doesn't mean that it's
9 premature. I don't think they waive the right to take this
10 discovery.

11 **MR. MATTERN:** No. I think that's -- certainly the
12 protective order is one component, but I think the broader
13 point is they said they weren't seeking source code discovery
14 at this point, so putting up an ESI witness to talk about
15 preservation of source code seems premature.

16 Those conversations would be better had if plaintiffs get
17 to the point that they think that source code discovery is
18 appropriate and only after having those conversations. And
19 this would be something not only TikTok but the other
20 defendants who this issue has not been raised for. You know,
21 premature to raise it now when plaintiffs have said that
22 they're not seeking this kind of discovery and premature to
23 raise it --

24 **THE COURT:** I mean, to the extent they said they
25 weren't seeking it, they said that they could seek it later. I

1 mean, again, I don't think there was a complete waiver for
2 purposes of this case ever by the plaintiffs to seek even what
3 you're calling source code discovery; right? They kept open
4 that possibility later, and it's up -- I mean, it's up to the
5 party taking the discovery to time which discovery they want to
6 take; right? I mean, unless there's a court order like barring
7 it, like if it's a phasing or bifurcating of a discovery.

8 **MR. MATTERN:** I'm with you there, Your Honor, that
9 there wasn't a waiver, but our point is that they've said that
10 even at the last DMC they're not taking source code discovery
11 now and so it's premature to put up a witness on us now.

12 **THE COURT:** What you're calling source code discovery,
13 they're calling source code adjacent discovery, so you're not
14 really talking to each other.

15 So whatever bucket you want to put it in, again, there's
16 nothing to stop them from taking even what you're calling
17 source -- they can say today "We've changed our minds and we
18 want to start taking discovery on source code." I don't
19 think -- there's no procedural way to object to that, is there?

20 **MR. MATTERN:** I think, Your Honor, yes, we would say
21 that it's not relevant to their claims and not proportionate.
22 I mean, yes, those would be our objections.

23 **MR. WEINKOWITZ:** I can assure counsel that we're
24 actually not looking for the discovery or a deposition on the
25 actual source code. That is not the topics. The topic is:

1 Where do they store versions of their tools? Where do they
2 store versions of their algorithms and their versions of their
3 source code? How do they describe it? How do they revise it?
4 What documents exist without actually getting into the actual
5 source code? We have not crossed that bridge. This is a
6 different bridge.

7 **MR. MATTERN:** I think, one, this is to our point about
8 why this is premature, and this is something the parties should
9 continue having meet and confers on.

10 But, two, at least as plaintiffs have briefed this in
11 their statement, what they want information on is how we -- was
12 GitHub and, like, similar programs, which is repositories, as
13 you know, for source code.

14 What they asked for is information about comments to
15 source code, about how it was modified. They're really asking
16 more for descriptions of source code.

17 I take Mr. Weinkowitz's representation, though, that he
18 says that they're not really asking for source code
19 information, and so I think it's -- the parties should simply
20 continue to meet and confer about this to see if we can narrow
21 it to a universe of information that we think is appropriate
22 and that wouldn't encroach on the source code production.

23 **THE COURT:** Okay. So it's clearly not ripe. You
24 haven't completed the meet-and-confer process, but you've
25 asked -- I think you've at least implicitly, if not directly,

1 asked for guidance on this issue. So, again, I don't think a
2 prematurity argument is going to work here because there's
3 no -- they never waived the ability to take discovery on source
4 code, even source code itself, not -- and, again, I've just got
5 a memory that somebody asked for source code. You kept open --
6 it was very clear once or twice to say "We still want to take
7 source code adjacent discovery."

8 And I understand what you thought that meant and what they
9 thought it meant. You know, talk it out in the meet-and-confer
10 process, but I don't think you're going to prevail on a
11 prematurity argument at this point because there was no --
12 there's no timing of the discovery issue here on source code in
13 any event.

14 **MR. MATTERN:** I appreciate that, Your Honor. I think
15 to reframe it, I think our dispute is over the meaning of
16 "adjacency." And so what I think is premature is this dispute
17 because we're not having a meeting of the minds about what
18 "adjacent" even means.

19 And it seems like I've just heard Mr. Weinkowitz say that
20 they don't want discovery into what we would consider to be
21 source code information. So maybe it would make sense to
22 continue to discuss this issue to see if we can find a path
23 forward, which, again, is why we did not think this dispute was
24 ripe for inclusion for this DMC.

25 **THE COURT:** So continue to meet and confer, and

1 however you describe the subject of the discovery sought,
2 whether -- you know, the description of it isn't going to
3 resolve the issue, whether you call it source code or you call
4 it source code adjacent. It's whether -- you know, whether --
5 I mean, unless there's a privilege reason or some other really
6 good reason to refuse a witness, I don't understand how you
7 can't -- how you can force the other side to say, "Well, you
8 can't take discovery at this time on this issue because I don't
9 think you should." That doesn't work. It doesn't work that
10 way.

11 **MR. MATTERN:** But I don't think plaintiffs have said
12 that they want to take source code discovery at this point. In
13 fact, I think Mr. Weinkowitz has said a few minutes ago that
14 was not the intent.

15 **THE COURT:** The way you framed what you think they're
16 asking for is you think it's source code discovery; right? And
17 so it -- my point is even if you're right, and I'm not saying
18 you're right, but even if you want to characterize it as source
19 code discovery because it's too close to the actual source code
20 to be what they would call source code adjacent -- right? -- it
21 doesn't matter at the end of the day because they didn't waive
22 the ability to take source code discovery. That's my point.

23 **MR. WEINKOWITZ:** And, Your Honor, just may I respond?

24 **THE COURT:** Yeah.

25 **MR. WEINKOWITZ:** I just would encourage -- I was going

1 to hand this up, but the topics are very, very specific and
2 they're designed around not getting at the source code but
3 information about the source code, and it also includes
4 modifications, revisions, or changes to the tools and the
5 platform and the algorithm.

6 We don't want to know what the code looks like. We just
7 want information for where is this stored, what are the
8 documents that are generated, what is the decision-making
9 that's made to change when there's a change in the platform.
10 That's what these topics are about.

11 They're labeling it as just source code. First of all,
12 you're right, we didn't waive any source code information. But
13 they're making it specific to source code, and it's not
14 specific to source code.

15 And, you know, I'm not sure what else we're going -- I'll
16 meet -- we'll meet and confer, but the topics are very, very
17 clear, and they're just not willing to give us a witness.

18 **THE COURT:** I encourage the parties to meet and confer
19 and try to clarify the scope of what this discovery is and
20 whether it's putting aside whether it's premature or not, you
21 know, whether it's proportional -- right? -- whether, you know,
22 it's not overly burdensome, those are the issues that you can
23 certainly try to mitigate and try to avoid future disputes on.

24 **MR. MATTERN:** Yes. Thank you, Your Honor.

25 **THE COURT:** All right.

1 **MR. WEINKOWITZ:** Thank you, Your Honor.

2 **THE COURT:** All right. So I think going -- when I
3 went through the unripe disputes, I think I picked up most. Is
4 there more unripe fruit to pick?

5 **MR. CHAPUT:** Your Honor, Isaac Chaput on behalf of the
6 Meta defendants from Covington & Burling.

7 Just one very brief update that was not in the DMC
8 statement because it had not yet arisen at that time, but we
9 wanted to flag it for Your Honor, which is that tomorrow Meta
10 defendants and plaintiffs will be filing a joint letter brief
11 on disputes relating to plaintiffs' 30(b) (6) deposition notice
12 directed to Meta. Those were not flagged in the DMC statement
13 because they had not yet ripened or crystallized at the time
14 that statement was filed.

15 **THE COURT:** Okay. All right. So you've gone through
16 all the meet and confers, and you still can't resolve the
17 30(b) (6) issue?

18 **MR. CHAPUT:** We have endeavored to resolve the issues
19 we thought that we might be able to, which is why we hadn't
20 flagged it previously, but it appears we have not.

21 **THE COURT:** Okay. Thank you for that update. And
22 that will be filed tomorrow?

23 **MR. CHAPUT:** That is our expectation at present, yes,
24 Your Honor.

25 **THE COURT:** Okay. A couple places in the status

1 report at least I saw some confusion or discussion as to when
2 is a dispute ripe versus unripe.

3 All right. So I'll make it very easy. It's ripe when
4 you've gone through all the meet and confer, including lead
5 counsel meet and confer -- right? -- and it's ready to be
6 briefed or has already been briefed. Right? Maybe overripe at
7 some point. But it's certainly ripe at that time. It's
8 unripe -- right? -- if you haven't completed all the
9 meet-and-confer processes. Right?

10 Now, you certainly are free to -- and I think you've been
11 doing this -- in the unripe section, you can tell me, you know,
12 the only thing left to do is the meet and confer of lead trial
13 counsel -- right? -- or, as you've said, "We're still
14 continuing to meet and confer." Right? That's fine. That's
15 part of why you -- it's a status report, so I'm asking for
16 that.

17 But the question of whether to flag it to me as ripe or
18 unripe, the dividing line I think is pretty easy. If you've
19 finished all the final meet and confers to lead trial counsel
20 and the only thing left to do is file the brief or you've
21 already filed the brief, then it's ripe.

22 **MR. WARREN:** Your Honor, may I ask a point of
23 clarification --

24 **THE COURT:** Sure.

25 **MR. WARREN:** -- on the operation of your standing

1 order?

2 We just want to make sure that when one party invokes H(2)
3 of your standing order and asks for that meeting of lead trial
4 counsel, when it happens, if one party is unsatisfied and feels
5 like the meet-and-confer process has expired and they're not
6 getting anywhere, that party would like to proceed with letter
7 briefing or presenting the dispute as ripe rather than having
8 the other party sort of essentially hold the process hostage by
9 saying, "No, no, no. Let's meet and confer and try again.
10 Let's meet and confer and try again." Because that's the
11 concern we have, is that that can go on indefinitely and
12 prevent the party seeking relief from actually -- from actually
13 getting it.

14 **THE COURT:** So, again, I'll read paragraph H(2) from
15 my standing order. The condition is only after counsel for the
16 parties have communicated in those efforts but remain unable to
17 resolve the dispute, any party may demand a meeting of lead
18 trial counsel.

19 What's the condition? Only after counsel and the parties
20 have communicated in those efforts but remain unable to resolve
21 the dispute. Have you communicated in those efforts and been
22 unable to resolve the dispute? Then you can ask for a meet and
23 confer of lead trial counsel.

24 **MR. WARREN:** Yes, Your Honor, but the question is at
25 the meeting of lead trial counsel --

1 **THE COURT:** Yes.

2 **MR. WARREN:** -- if at that meeting the dispute is not
3 resolved, then what?

4 **THE COURT:** Okay. Lead counsel meetings shall occur
5 within 10 business days of the demand, and then now we go to
6 paragraph H(3) (as read):

7 "Within five business days of the in-person meeting
8 of lead trial counsel referred to above, the parties shall
9 file" -- "jointly file a detailed letter with the Court."
10 No exceptions there.

11 **MR. WARREN:** Perfect.

12 **THE COURT:** Five-day deadline.

13 **MR. WARREN:** That's all we needed to hear. Thank you.

14 **THE COURT:** I thought -- I thought it was pretty
15 clear.

16 **MR. WARREN:** It was to us, Your Honor, but I think
17 there is sometimes a desire to extend the meet-and-confer
18 process even among lead trial counsel and say "Let's try
19 again."

20 **THE COURT:** As I said, based on long experience
21 fighting discovery battles, I fashioned my standing order in a
22 way to avoid -- well, to help expedite rulings on discovery
23 disputes to help parties reach their resolutions efficiently.

24 **MR. WARREN:** Thank you.

25 **THE COURT:** Questions, Ms. Simonsen?

1 **MS. SIMONSEN:** No. We appreciate the clarification
2 that we should follow Your Honor's order, which is how we had
3 been interpreting what a ripe dispute is.

4 **THE COURT:** Okay. Now, I also point out that I think
5 I have in here that you -- the parties are free to jointly
6 withdraw a dispute even after the letter brief is filed.
7 Right? So things can change and people can -- there's nothing
8 in here barring voluntary continuing meet and confers --
9 right? -- even of lead trial counsel after the letter brief has
10 been filed or after the formal meet and confer of lead trial
11 counsel, and I would certainly encourage, like I would in a
12 settlement conference, you know, I certainly encourage parties
13 to keep talking, if they can, to work things out.

14 **MR. WARREN:** Yes, Your Honor. And, in fact, I think
15 you saw that the parties were able to take some issues off the
16 board in advance of today.

17 **THE COURT:** I'm very appreciate of that.

18 **MS. SIMONSEN:** And we understand, Your Honor, just to
19 clarify, that the parties can agree to forgo the letter
20 briefing and instead tee something up as ripe in the DMC
21 statement, which is how we've been approaching the disputes to
22 date. For instance, some of the issues that we argued earlier
23 today, we didn't letter brief, but that was because the parties
24 agreed that they were ripe. Otherwise we understand that the
25 parties are to letter brief the dispute.

1 **THE COURT:** So that's right. I was -- you remind me I
2 was going to give you more clarification on that.

3 So timing-wise -- right? -- there is -- there's going to
4 be over -- so there's going to be a period of time when you've
5 completed all the meet and confers, even the meet and confers
6 of lead trial counsel, and you can either brief it in the DMC
7 or brief it in a letter brief because the timing of both, like,
8 are -- like fall right within each other. So the question is:
9 Where do you do it?

10 So basically it's got to be in the DMC. At least a status
11 report on it has to be in the DMC even if it's not fully
12 briefed in the DMC because I need to know that it's a ripe
13 dispute and what the dispute is -- right? -- which you've been
14 doing. So -- and tell me "We either have or we will have a
15 letter brief on this." Right?

16 Use your discretion on whether you want to tee it up in
17 the DMC joint status report. If it's something that's purely
18 or, you know, primarily administrative or procedural, like
19 "Should we file that chart on the docket," I would encourage
20 you to brief it fully because that's probably less than a page
21 of briefing to tee it up in the DMC.

22 But if the dispute is of such complexity that you're
23 citing a lot of law and you're basically approaching the page
24 limits that you -- that would fall in the discovery letter
25 brief page limits -- right? -- then don't fill the DMC status

1 report with something that probably more appropriately
2 requires -- because it's -- it must be of complexity or
3 substance that it requires full briefing in a letter brief.

4 **MR. WARREN:** Thank you, Your Honor.

5 And point of clarification. For example, the litigation
6 hold issue in this one, that would have been appropriate letter
7 brief versus a DMC statement?

8 **THE COURT:** Probably, yeah. Yeah. You briefed it as
9 if it were the letter brief here, which is fine for today's
10 purposes, but going forward, I mean, use your discretion.
11 Certainly if it's like a really discreet issue, like even if
12 it's of some substance but it's discreet and it's short enough,
13 you can certainly -- again, if that timing works out, you can
14 brief it in the DMC status report.

15 **MR. WARREN:** Thank you, Your Honor.

16 **THE COURT:** All right.

17 **MR. WARREN:** And I'll just represent for plaintiffs,
18 our preference will be presenting disputes to you that are
19 substance via letter brief in part because it just creates
20 clarity with your standing order.

21 **THE COURT:** Yeah. Okay.

22 All right. I think I've given all the clarifications I
23 was supposed to give today.

24 Anything further? I know I skipped a bunch of unripe
25 issues, but I didn't see any request for guidance in the ones I

1 skipped.

2 **MS. SIMONSEN:** Nothing from defendants. Thank you
3 very much, Your Honor.

4 **THE COURT:** Okay. Anything from the plaintiffs' side?

5 **MR. WARREN:** No, nothing from plaintiffs' side.

6 **THE COURT:** All right. We are adjourned till the next
7 DMC, which is actually coming up pretty shortly because of the
8 way the DMC next month got scheduled. So hopefully next
9 month's DMC will be short. All right.

10 **THE CLERK:** We're off the record in this matter.

11 **THE COURT:** Oh, can we go back on the record?

12 **THE CLERK:** We're back on the record in this matter.

13 **THE COURT:** So I noted -- or my clerk noted -- for the
14 state agency filings, there was a set of letter briefs filed
15 and then a corrected set of letter briefs filed, and I think
16 one had the attestation and the other didn't.

17 And so I think Docket Number 736 was essentially replaced
18 by Docket Number 738. Will the parties agree we can simply
19 terminate as moot Docket 736?

20 **MS. SIMONSEN:** Your Honor, I just simply don't know
21 the answer off the top of my head, and I can check with a
22 colleague quickly.

23 **THE COURT:** Okay.

24 **MS. SIMONSEN:** He has confirmed. Yes, the defendants
25 are comfortable with that.

1 **THE COURT:** The state AG side, is that okay?

2 **MR. LEWIS:** Yes.

3 **THE COURT:** Okay. So you will see that on the docket.

4 We will resolve or terminate the first filing Docket 736 as
5 moot.

6 Now we can go off the record.

7 **THE CLERK:** We're off the record in this matter.

8 (Proceedings adjourned at 2:42 p.m.)

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3 CERTIFICATE OF REPORTER

4 I certify that the foregoing is a correct transcript
5 from the record of proceedings in the above-entitled matter.
6

7 DATE: Tuesday, April 23, 2024
8
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10 
11 _____
12 Kelly Shainline, CSR No. 13476, RPR, CRR
13 U.S. Court Reporter
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